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**STATEMENT OF NATIONAL LABOR RELATIONS BOARD
REGARDING “KENTUCKY RIVER” CASES**

An important issue pending before the National Labor Relations Board is the proper legal standards for determining whether a nurse or other skilled employee is a supervisor as defined in Section 2(11) of the National Labor Relations Act. In *Oakwood Healthcare Inc.*, Case 7-RC-22141; *Golden Crest Healthcare Center*, Case 18-RC-16415; and *Croft Metals Inc.*, Case 15-RC-8393, the Board is considering the test for determining whether an individual assigns or responsibly directs employees using independent judgment, and thus qualifies as a supervisor under Section 2(11).

The United States Supreme Court has twice rejected prior Board rulings for minimizing the importance of independent judgment in the assignment or direction of employees by nursing personnel. In those cases, the Board found that nurses who direct other employees in their patient care duties are not statutory supervisors. In the first case [*NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 579-580 (1994)], the court rejected the Board's analysis as “inconsistent with ... the statutory language,” because it “rea[d] the responsible direction portion of § 2(11) out of the statute in nurse cases.” In the second case [*NLRB v. Kentucky River Community Care, Inc.*, 532 U.S. 706, 721 (2001)], the court found the Board’s interpretation of “independent judgment” to be incorrect.

In deciding the three pending cases, the Board is bound by the decisions of the Supreme Court. After reviewing the written record, the briefs and arguments of the parties, the relevant case precedent and the applicable sections of the Act, the Board will issue its decisions in the pending cases.

The three cases have been pending before the Board since 2002. As part of its consideration of the cases, the Board issued a Notice and Invitation to File Briefs in July 2003, to which 22 interested parties responded, in addition to eight briefs that previously had been filed by the parties.

On February 10, 2006, the AFL-CIO filed a motion for oral argument in *Oakwood Healthcare*, 7-RC-22141, and *Croft Metals*, 15-RC-8393; and on May 4, 2006, the Service Employees International Union filed a request for oral argument. On June 23, 2006, the Board denied the requests for oral argument on the basis that “the record and briefs adequately present and address the issues and the positions of the parties and amici.” Member Liebman would have granted the requests.

[Briefs and other documents related to these cases can be found at
<http://www.nlrb.gov/nlrb/about/foia/FrequentlyRequestedDocuments.asp>]

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